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Scott W. Nickerson Clerk

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, ss

BARNSTABLE SUPERIOR COURT

DOCKET NO: BACR2000-48590

*Oct. 19, 2015 - The Commonwealth has 30 days
to file an opposition, if any, by the Court*

COMMONWEALTH

v.

CHARLES ROBINSON

Nickerson, J. f. g. Ant. CG
**MOTION TO PRECLUDE ANY MEDICAL AND/OR
PSYCHOLOGICAL EVALUATION BY THE
COMMONWEALTH**

INTRODUCTION

The Defendant, Charles Robinson ("Robinson"), moves the court to issue an order precluding the commonwealth from conducting a medical and/or psychological evaluation of his mental state, and to preclude the commonwealth from offering any such testimony at evidentiary hearing on the matter. As reasons therefor, the commonwealth has not performed a psychiatric evaluation on Mr. Robinson during the one (1) year period of time it has been permitted to do so by Court order dated October 3, 2014.

STATEMENT OF THE CASE

On May 16, 2011, the Court noted the numerous attempts that were made in order to conduct a hearing on Mr. Robinson's Motion for New Trial which had been stymied by Mr. Robinson's recurrent mental health issues. (See Mass Court Docket Sheet, paper #

*FORWARDED TO
NICKERSON, J. @
FALL RIVER on 10/14/15*

159)¹. Therefore, the Court ordered it would take no further action on Mr. Robinson's then pending Motion for New Trial and invited Counsel to file an amended motion accompanied by either a.) an affidavit of a mental health professional or b.) an affidavit of Counsel supported by a clinical report of a mental health professional offering a fresh assessment of Mr. Robinson's current competency as well as his competency at the time of his trial. See Exhibit A, paper # 159.

On May 20, 2014, Mr. Robinson, through counsel, filed the Defendant's Amended Motion for a New Trial. See Exhibit A, paper # 167. The motion was supported by forensic psychologist, Ronald Ebert, Ph.D. Dr. Ebert, among other things, interviewed Mr. Robinson twice, administered psychological testing, and reviewed voluminous records. Based on his review, Dr. Ebert opined to a reasonable degree of psychological certainty that Mr. Robinson was not competent at the time of his trial.

On June 5, 2014, the commonwealth was granted sixty (60) days to file an opposition, if any, to Mr. Robinson's Amended Motion. See Exhibit A, Order dated 6/5/2014. On August 6, 2014, the commonwealth responded with two (2) motions. The commonwealth moved for an opportunity to have Dr. Martin Kelly exam and evaluate Mr. Robinson and to file an opposition, if any, within thirty (30) days of Dr. Kelly's submission of his

¹ Mass Court docket sheet attached as Exhibit A.

own report. See Exhibit A, papers # 170 & 171. The commonwealth's motions were allowed by the Court on October 3, 2014.

At all times, the Defendant has cooperated with the commonwealth to facilitate Dr. Kelly's work. On March 9, 2015, the Court endorsed an order granting the commonwealth access to Mr. Robinson's Bridgewater State Hospital psychiatric records. The Defendant did not object or oppose the motion². On March 27, 2015, at the commonwealth's request, Mr. Robinson, through counsel, turned over the materials Dr. Ebert relied on in making his assessment of Mr. Robinson's competency³. On May 13, 2015, Counsel advised the commonwealth by letter that it had been six (6) months and Dr. Kelly still had not met with Mr. Robinson⁴. On May 18, 2015, Counsel provided additional work product documentation at the commonwealth's request⁵.

As of the date of this filing, October 6, 2015, it has been over a year and Dr. Kelly has not performed his evaluation or examination. Therefore, Mr. Robinson has moved to preclude the commonwealth from conducting any evaluation or relying on such expert opinion testimony at evidentiary hearing regarding Mr. Robinson's competency at the time of his trial.

² Copy of Allowed Motion noting no objection by the Defendant attached as exhibit B.

³ Copy of March 27, 2015, letter attached as Exhibit C.

⁴ Copy of May 13, 2015, letter attached as Exhibit D.

⁵ Copy of March 18, 2015, letter attached as Exhibit E.

ARGUMENT

The commonwealth must be precluded from conducting any evaluation or examination of Mr. Robinson, be it by Dr. Kelly or any other individual. The commonwealth has unreasonably failed to begin and complete the examination over the past year despite the Defendant's cooperation. The delay is a violation of Due Process, Mass. Gen. L. ch. 123, §15, and raises equitable concerns regarding unreasonable delays and fairness.

The Due Process Clause of the Fourteenth Amendment and Article Twelve of the Massachusetts Declaration of Rights provide defendant's with protection against unreasonable delays in post-convictions proceedings attributable to the commonwealth. See Commonwealth v. Swenson, 368 Mass. 268, 279-80 (1975). This is particularly so where the commonwealth engages in dilatory tactics. Id. Such is the case in Mr. Robinson's proceedings. The commonwealth identified Dr. Martin Kelly as its expert and received an October 3, 2014, order permitting him to exam and evaluate Mr. Robinson. In March, 2015, the Defendant did not object to the commonwealth's acquisition of his Bridgewater State Hospital records and, at the commonwealth's request, provided work product materials of his own expert, Dr. Ebert. In May of this year, Counsel urged the commonwealth to proceed with the evaluation. To date, the

commonwealth has taken no action. This is a violation of Mr. Robinson's constitutional due process rights.

The commonwealth's one (1) year delay in performing an examination and evaluation of Mr. Robinson is also in violation of the time constraints of Mass. Gen. L. ch. 123, §15, the statute upon which the commonwealth based its authority to select Dr. Kelly to perform an evaluation. Subparagraph (b) of §15 states that an evaluation under the statute is to be completed in a period not to exceed forty (40) days.

In addition, the commonwealth's unreasonable delay in bringing about Dr. Kelly's examination and evaluation within a year, despite the Defendant's cooperation, raises equitable concerns of laches, waiver, and estoppel. See Jubinville v. Jubinville, 313 Mass. 103, 105 (1943) (laches is present when there is an unreasonable delay in pursuing an action to the detriment of the opposing party); Spencer v. Reeder, 382 Mass. 398, 411 (1982) (a party may waive rights by failing to assert them); Moran v. Town of Mashpee, 17 Mass. App. Ct. 679 (1984) (party failing to assert a right may be barred by estoppel).

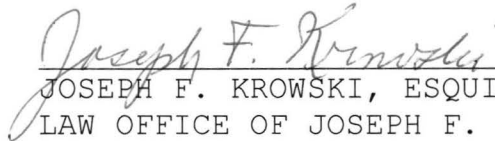
The Defendant submits that the commonwealth must be precluded from conducting an evaluation and offering expert testimony regarding Mr. Robinson's competency. This remedy would preserve Mr. Robinson's rights as outlined above and be

consistent with Rule 14(b)(2)(c): "the court may in its discretion exclude evidence for noncompliance with a discovery issue or order imposed pursuant to this rule."

CONCLUSION

For the forgoing reasons, the Defendant's Motion to Preclude any Medical or Psychological Evaluation by the Commonwealth must be allowed.

By his Attorney,



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